



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that Council Establish PCE/TCE Advisory Committee Consistent with Resolution No. 97-09

MEETING DATE: November 14, 2000

PREPARED BY: City Attorney

RECOMMENDATION: That the City Council establish the Advisory Committee as set out in Resolution No. 97-09 adopted by the City Council January 15, 1997.

BACKGROUND: The City Council on January 15, 1997, adopted Resolution No. 97-09. That resolution established a procedure, which provided the City with the necessary authority to conduct an investigation, which could lead to the resources to devote to cleaning up the contamination situation. One of the aspects of that procedure was to establish an Advisory Committee which among other things would be approached by staff so that a recommendation could be brought back to the City Council regarding the issuance of legislative subpoenas pursuant to the authority contained in California Government Code §37104. Under the terms of Resolution No. 97-09, the Advisory Committee at that time was made up of then Mayor Pennino and then Mayor Pro Tempore Sieglock.

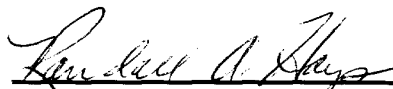
Based upon recommendations of that Advisory Committee, the City in fact did issue several Legislative Subpoenas. The issuance and service of those subpoenas resulted in a piece of litigation challenging the City's right to institute a legislative proceeding such as we have done. It as well challenged the issuance of the subpoenas pursuant to the authority contained in Government Code §37104. As I am sure you will all remember, that particular case progressed through various state court levels until a decision was rendered by the California Supreme Court on July 24, 2000 which validated the City's issuance of Legislative Subpoenas. Connecticut Indemnity Co. v. Superior Court, 23 Cal 4th 807, 98 Cal Rptr. 2d 221.

Since the California Supreme Court has now validated our issuance of Legislative Subpoenas, we have the opportunity to again use that authority to the City's advantage in the PCE/TCE activities.

It is therefore requested that at this time the Mayor appoint the Advisory Committee of the City Council, which is to consist of two Council Members. The previous pattern followed, that of appointing the Mayor and the Mayor Pro Tempore, is the committee makeup which staff recommends to the Mayor at this time.

FUNDING: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____
H. Dixon Flynn -- City Manager

RESOLUTION NO. 97-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
TO INVESTIGATE THE NATURE AND EXTENT OF THE EXTENSIVE
TOXIC ENVIRONMENTAL CONTAMINATION AT AND EMANATING
FROM WITHIN THE CITY OF LODI AND THE NEED, IF ANY, FOR
LEGISLATIVE ACTION AT THE MUNICIPAL LEVEL

=====

WHEREAS, the California Environmental Protection Agency, Department of Toxic Substances Control, the California Regional Water Quality Control Board - North Coast Region, and their various environmental consultants have conducted soil and groundwater investigations of the Lodi Groundwater Site ("Site"), consisting of approximately six hundred acres which encompasses the City of Lodi's central business district and peripheral commercial and residential community, from 1989 through 1996; and

WHEREAS, in the performance of these investigations numerous properties or parcels were identified as potential sources of solvent releases within the Site; and

WHEREAS, as a result of these investigations, multiple areas of soil and subsurface contamination by tetrachloroethene, trichloroethene and other chlorinated solvents have been detected throughout the Site; and

WHEREAS, as a result of these investigations and the discovery of the contamination, the City Council of the City of Lodi has grown increasingly concerned about the protection of public health, safety, welfare, the environmental and natural resources within the jurisdiction of the City of Lodi, and the preservation and restoration of property values within the City of Lodi.

NOW, THEREFORE, BE IT RESOLVED, that based on the above, the City of Lodi does hereby establish a legislative proceeding before the City Council of the City of Lodi to investigate the adequacy of existing legislative environmental schemes and to take such action, including legislation at the municipal level and recommendations to the appropriate state or federal legislative body, as the City Council deems appropriate.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that, based on the above, the City of Lodi does hereby establish an advisory committee of the City Council consisting of two Council Members to investigate the toxic environmental contamination at and emanating from within the City of Lodi and report back to the City Council from time to time but no later than December 31, 1997. It is the intention of the City Council that this advisory committee will assess, among other things, the nature and source of any toxic contamination at and emanating from within the City of Lodi, investigate potential sources of releases of the contamination, investigate potential methods to finance the abatement, if needed, of said contamination, investigate the adequacy and sufficiency of enforcement schemes at the municipal, state and federal levels, investigate the adequacy and sufficiency of regulatory schemes at the municipal, state and federal levels, investigate the adequacy and sufficiency of liability schemes and financial responsibility requirements at the municipal, state, and federal levels, and assess the adequacy, sufficiency, and limitations of financial responsibility mechanisms, including without limitation, liability insurance and other mechanisms in the private and commercial sector of the community.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that, in order to assist the City Council in the conduct of its investigation, the City Attorney's office will provide all necessary and appropriate legal support services to this advisory committee and the City Council.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that, in order to assist the City Council in the conduct of its investigation, the advisory committee may, from time to time, recommend that the City Council issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before the City Council pursuant to California Government Code §37104.

Dated: January 15, 1997

=====

I hereby certify that Resolution No. 97-09 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 15, 1997, by the following vote:

AYES: COUNCIL MEMBERS - Land, Mann, Sieglock, Warner
and Pennino (Mayor)

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

JENNIFER M. PERRIN
City Clerk